No. 80-1694

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ATWOOD VACUUM MACHINE COMPANY, *Appellant,*

v.

FORD MOTOR COMPANY, *Appellee.*

On Appeal From The Supreme Court Of Florida

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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The Appellant, ATWOOD VACUUM MACHINE COMPANY, herein respectfully submits its Brief in opposition to the Motion To Dismiss or Affirm filed by the Appellee, FORD MOTOR COMPANY.

In its Appellee's Motion To Dismiss or Affirm, FORD MOTOR COMPANY asserted that ATWOOD "knew for a certainty" that FORD station wagons, which contained door latches manufactured by ATWOOD, would be sold in the State of Florida. However, there is nothing in the record or any factual basis to indicate that ATWOOD knew the destination of any of the automobiles manufactured by FORD MOTOR COMPANY. In arguing that ATWOOD has direct contact with the State of Florida, FORD even softens its own assertion by later stating that "ATWOOD clearly delivered its product into the stream of commerce with the expectation that it would be purchased by consumers in Florida, as well as in the various other states". Then FORD added that "ATWOOD had every reason to believe that the product would be sold in any or all states, including Florida". FORD's argument is really an argument of "foreseeable likelihood", without showing that ATWOOD had any conduct or connection within the State of Florida. This is exactly the consideration this Court has said is not an appropriate test for determining personal jurisdiction under commercial long-arm statutes. *World-Wide Volkswagen* v. *Woodson*, 444 U.S. 286 (1980).

Foreseeability: FORD's argument centers on the issue of foreseeability or possibility; that is, it was "foreseeable" or "possible" that FORD could ultimately send its station wagons anywhere in the world. It would be equally "foreseeable" that the station wagons would be distributed only in the 48 contiguous states; or in only states that do not have certain exhaust emission control laws; or in a foreign country; or anywhere where FORD, nor ATWOOD, chooses to do business. The destination of the station wagon was left entirely to the discretion, control, and direction of FORD MOTOR COMPANY, with no

imput from ATWOOD and with no effect upon the sale of the small component part.

FORD MOTOR COMPANY is squarely relying upon "foreseeability" in the instant case to improperly assert jurisdiction over ATWOOD in Florida. In *World-Wide Volkswagen*, the Court stated that the "foreseeability" that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State, but rather is that the Defendant's conduct and connection with the forum are, such that he should reasonably anticipate being hauled into Court there". ATWOOD had no contact, conduct, or connection with Florida.

Conduct: It is obvious that ATWOOD did not sell its product in Florida. The product was sold to the FORD MOTOR COMPANY in Michigan. The sale of the component part was completed upon delivery of the part to the FORD MOTOR COMPANY. It is a profound distortion to characterize ATWOOD as utilizing FORD's world-wide distribution network of retail automobile dealers as ATWOOD's own network for distribution of its small component part, because ATWOOD had no control or direction over where FORD chose to sell its finished product. It would be equally unfair and a denial of due process to place that characterization on any manufacturer who supplies one of hundreds of small component parts which are placed into one large finished product which is distributed at the control and direction of the finished product manufacturer on a world-wide basis.

The fact situation in the instant case is clearly distinguishable from the case of *Oswalt* v. *Scripto*, 616 F.2d 191 (5 C.A. 1980). Therein, Tokei-Seiki, a manufacturer of cigarette lighters, arranged with Scripto, a domestic United States company, for Scripto to be

Tokai-Seiki's vehicle for the direct and exclusive distribution and sale of finished cigarette lighters. Tokai-Seiki was not a supplier of component parts, it manufactured the entire finished product. The situation was totally different from the relationship between FORD MOTOR COMPANY and ATWOOD, because the present case is a component parts case and *Oswalt* was not.

FORD MOTOR COMPANY'S Motion To Dismiss touches upon matters relative to the merits of the policy decision as to which forum is the proper one for this case. Because the present posture of this case is still an inquiry into the exercise of this Supreme Court's jurisdiction. ATWOOD will not address directly the merits of the policy argument except to suggest that this is more than adequately addressed in the dissenting opinion by Mr. Justice Sundberg of the Florida Supreme Court. (Appendix "A" to ATWOOD VACUUM MACHINE COMPANY's jurisdictional statement).

The Appellant, ATWOOD VACUUM MACHINE COMPANY, respectfully requests the Court to deny the Appellee's Motion To Dismiss and to grant jurisdiction in this cause.

The issue here presents a substantial Federal question, particularly in our age of increased commercialism and products law. It is important for the Court to definitively resolve the issues that have arisen in regard to the exercise of in personam jurisdiction. The ramifications effect thousands of small manufacturers, large manufacturers, insurance companies, consumers, and the Courts. The divergence of the positions of the parties, and of the opinions rendered by the Supreme Court of

Florida in the split decision which is the subject of this appeal, crystallizes the need for clarification and direction by this Court.

Respectfully submitted,

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